Supreme Court, U.S.
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No. _____ OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1997

RESORT PROPERTIES, INC.,

Petitioner,

v.

GERALD P. MISERANDINO AND
KAREN L. MISERANDINO,

Respondents.

On Petition For A Writ Of Certiorari To The Maryland Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER FIRST-CLASS MAIL DELIVERY BY THE UNITED STATES POSTAL SERVICE CONSTITUTES A REASONABLY CALCULATED METHOD OF PROVIDING NOTICE FOR PURPOSES OF OBTAINING *IN PERSONAM* JURISDICTION SO AS TO SATISFY REQUIREMENTS OF DUE PROCESS?

II. WHETHER THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION REQUIRES A STATE TO RECOGNIZE THE VALIDITY OF AN *IN PERSONAM* JUDGMENT OBTAINED WITHIN A FOREIGN STATE IF ACTUAL NOTICE OF THE FOREIGN ACTION WAS RECEIVED BY THE JUDGMENT DEBTOR, IRRESPECTIVE OF THE METHOD USED TO OBTAIN ACTUAL NOTICE?

NOTE CONCERNING CASE NO. 97-27 AND INCORPORATION BY REFERENCE OF APPENDIX

This case is the identical companion of Case No. 97-27, COMMONWEALTH OF VIRGINIA, *EX REL.*, SECRETARY OF THE COMMONWEALTH v. GERALD P. MISERANDINO, ET AL. The original Petition filed in this case adopted and incorporated by reference the Commonwealth of Virginia's Petition for Writ of Certiorari and Appendix filed in Case No. 97-27 (the "Virginia Petition"). The Clerk of this Court has indicated to counsel that a complete adoption by reference of another party's Petition for Writ of Certiorari is or may be defective. To cure this possible defect, the Commonwealth of Virginia has authorized the filing of this Supplemental Petition, which is a republication of the Virginia Petition that has been modified only as to the nomenclature of the parties. ALL REFERENCES HEREIN TO THE APPENDIX (App.) ARE TO THE APPENDIX IN THE VIRGINIA PETITION, WHICH IS HEREBY INCORPORATED BY REFERENCE.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the Maryland Court of Appeals were:

1. Gerald P. Miserandino, Defendant, Respondent herein.
2. Karen L. Miserandino, Defendant, Respondent herein.
3. Resort Properties, Inc., Plaintiff, Co-Petitioner herein.
4. Commonwealth of Virginia, *ex rel.* Secretary of the Commonwealth, Plaintiff-Intervenor, Petitioner herein.

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STATEMENT OF JURISDICTION

The judgment sought to be reviewed by this Court was initially entered by the Maryland Court of Appeals on February 12, 1997. (App. at 1.) The Maryland Court of Appeals denied the Petitioner's Motion for Reconsideration of its ruling and entered a Mandate associated with the ruling of February 12, 1997, on April 8, 1997. (App. at 56.)

OPINION BELOW

The February 12, 1997, opinion of the Maryland Court of Appeals, and the correction to page one of that opinion which was filed on April 8, 1997, appears in the Appendix to this Petition for Writ of *Certiorari*. (App. at 1.) The corrected opinion is also reported at 345 Md. 43, 691 A.2d 208 (1997), and is also available on LEXIS at 1997 Md. LEXIS 10. The Maryland Court of Appeals' order dated April 8, 1997, granting the Commonwealth of Virginia's Petition to Intervene but denying the Commonwealth's Motion for Reconsideration appears in the Appendix at 53.

NOTIFICATION

Pursuant to Rule 29.4(c), the Commonwealth of Virginia hereby advises this Court that the constitutionality of a statute of the state of Minnesota, that is, Minn. Stat. § 170.55 (1996), may be drawn into question by this proceeding and, therefore, 28 U.S.C. § 2403(b) may apply.

Accordingly, this Petition for Writ of *Certiorari* will be served upon the Attorney General of Minnesota upon its filing in this Court.

JURISDICTION, AND CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Court has jurisdiction to consider the issues raised in this Petition because such issues and the decision of the Maryland Court of Appeals sought to be reviewed in this proceeding call into to question the constitutionality of a statute of the Commonwealth of Virginia. 28 U.S.C. § 1257. Specifically, the decision of the Maryland Court of Appeals sought to be reviewed in this proceeding calls into question whether Va. Code Ann. § 8.01-329 (1950, 1992 Repl. Vol.), (App. at 77), satisfies the requirements of procedural due process established by the Fifth and Fourteenth Amendments to the Constitution of the United States. (App. at 70-76.) The questions raised by this Petition also draw into question the application of Article IV, § 1 of the Constitution.

STATEMENT OF THE CASE

This request for review arises out of a split decision of the Maryland Court of Appeals which refused to give full faith and credit to a Virginia judgment in the amount of $4,211.82 which was obtained by Resort Properties, Inc. ("Resort") against Gerald and Karen Miserandino ("the Miserandinos") in the Circuit Court of Warren County, Virginia. It is undisputed that Resort used the

procedural mechanism set forth in Va. Code § 8.01-329 in order to obtain *in personam* jurisdiction over the Miserandinos. This provision authorizes service of process on the Secretary of the Commonwealth as the statutory agent of persons who, among other things, conduct business in Virginia, enter into contracts in Virginia or have an interest in real property in Virginia. (App. at 77.)

Pursuant to § 8.01-329, a plaintiff seeking to obtain service upon a non-resident defendant must also submit an affidavit to the Secretary of the Commonwealth setting forth the defendant's last known address. After being served with process as the statutory agent of a non-resident, the Secretary of the Commonwealth is required to send copies of the pleadings which have been served upon her by first-class mail to the defendant's last known address as set forth in the plaintiff's affidavit. Va. Code § 8.01-329. (App. at 77.)

After obtaining the Virginia judgment in accordance with the mechanism set forth in Va. Code § 8.01-329 and described above, Resort recorded its judgment against the Miserandinos in the Circuit Court for Carroll County, Maryland. (App. at 2.) In accordance with Maryland procedure, a clerk in the Carroll County Circuit Court mailed the Miserandinos a notice informing them that a judgment had been recorded against them by Resort. (App. at 2.) Upon receipt of this mailed notice, the Miserandinos filed a motion to strike the entry of foreign judgment. (App. at 2.)

In their motion to strike, the Miserandinos denied that they were ever served with process in connection with the Virginia proceeding. They also claimed that they

had no knowledge of that proceeding until after they received the notice of judgment which was sent to them by the Carroll County Circuit Court. (App. at 2.) In addition, the Miserandinos argued that they lacked sufficient contacts with Virginia to confer *in personam* jurisdiction over them to a Virginia court. The Miserandinos subsequently waived their attack against the Virginia court's assumption of personal jurisdiction over them under Virginia's long-arm statute based upon their alleged "lack of contacts" with Virginia but persisted with their lack of notice allegation.[1]

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[1] Section 8.01-328.1 of the Virginia Code (1950, 1992 Repl. Vol.), Virginia's long-arm statute, provides, in pertinent part, that:

> A court may exercise personal jurisdiction over a person . . . as to a cause of action arising from the person's:
>
> 1. Transacting any businsess in this Commonwealth;
>
> * * *
>
> 6. Having any interest in, using, or possessing real property in the Commonwealth.

Virginia's long-arm statute is set-forth in full in the Appendix. (App. at 74.)

The underlying transaction giving rise to the Virginia judgment at issue in this proceeding involved the Miserandinos' interest in real estate in Virginia and a loan application which the Miserandinos allegedly executed in connection with such real estate. (App. at 3.) The Maryland Court of Appeals correctly recognized that the allegations contained within the Miserandinos' motion to strike were insufficient to raise an actual controversy regarding the basis for the Virginia court's jurisdiction since Resort's claim qualifies as a "specific jurisdiction" case which arose out of a cause of action relating to

The Carroll County Circuit Court initially sustained the Miserandinos' motion to strike, but, after a second hearing, reversed its original decision and recorded the Virginia judgment. (App. at 4.) The Maryland Court of Special Appeals affirmed the Circuit Court's opinion and the Miserandinos appealed to Maryland's highest court. (App. at 4.)

On appeal, the Maryland Court of Appeals considered the arguments of Resort and the Miserandinos regarding the constitutionality of the method of obtaining notice used in the Virginia proceeding, that is, first-class mail delivery by the United States Postal Service. The Maryland Court of Appeals, in a 4 to 3 vote with a vigorous dissent, ultimately concluded that this method, although expressly authorized by statute in the Code of Virginia, did not satisfy the requirements of procedural due process. (App. at 28-29.)

It was not until after the Maryland Court of Appeals reached its decision regarding the first-class mail delivery issue that the Commonwealth of Virginia was made aware of the Miserandinos' case or their challenge to Virginia's long-arm statute and the potential impact of the Maryland court's ruling on the enforceability of judgments obtained pursuant to Va. Code § 8.01-329. (App. at 59.) The ruling was reported in the press as being likely to "wreak havoc" on creditors' practice in Virginia. *See Virginia Lawyer's Weekly*, Vol. XI, No. 39, p. 1 (March 3, 1997). Upon being made aware of the constitutional

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the Miserandinos' "specific" contacts with Virginia, that is, "signing a contract and allegedly purchasing an interest in property in that jurisdiction." (App. at 7-8.)

issues raised by the Maryland Court's ruling, the Commonwealth of Virginia petitioned the Maryland court for leave to intervene in the Maryland proceeding. (App. at 58.)

The Commonwealth of Virginia also filed a Motion for Reconsideration in the Maryland Court of Appeals. (App. at 62.) In its Motion for Reconsideration, the Commonwealth of Virginia argued that the Maryland Court of Appeals' decision filed on February 12, 1997, was erroneous. In support of this contention, the Commonwealth of Virginia argued that the Virginia Code provides for sufficient procedural safeguards to ensure that the due process rights of non-resident litigants are protected. (App. at 62.) In addition, the Commonwealth of Virginia argued that the procedural mechanism set forth in Va. Code § 8.01-329 is "reasonably calculated to apprise interested parties of the pendency of the action and to afford them an opportunity to present their applications." (App. at 62.) At the conclusion of its Motion for Reconsideration, the Commonwealth of Virginia expressed its willingness and desire to submit additional briefs and argument to the Maryland Court of Appeals in defense of its statutes. (App. at 66.) Counsel for the Miserandinos filed a brief in opposition to the Commonwealth's Petition to Intervene.

The Maryland Court of Appeals did not order the submission of additional briefs or argument by the parties. Instead, by order dated April 8, 1997, the Maryland Court of Appeals granted the Commonwealth of Virginia's Petition to Intervene as a party in the proceedings but denied its Motion for Reconsideration. (App. at 53.) It

also issued a Mandate on April 8, 1997, implementing its ruling of February 12, 1997. (App. at 56.)

SUMMARY OF REASONS FOR GRANTING THE WRIT

This case presents issues of substantial public importance (1) for business interests engaged in interstate commerce and, (2) concerning the deference which must be given by sister states to the state court judgments obtained in accordance with long-standing state law. The case also involves issues which, as conceded by the Maryland Court of Appeals, have not yet been clearly resolved by this Court. (App. at 8.)

The Maryland court's decision has the potential to greatly disrupt creditors' practice in the densely populated northern Virginia area and around the country. The decision already has been publicly recognized by legal commentators as having the potential to "wreak havoc" with respect to the ability of Virginia's creditors to enforce judgments against non-resident debtors. *Virginia Lawyer's Weekly*, Vol. XI, No. 39, p.1 (March 3, 1997). This conclusion is supported by the fact that the Secretary of the Commonwealth processes over 50,000 requests for service upon non-residents per year. (App. at 82-83.) Moreover, the change in Virginia procedure suggested by the Maryland Court of Appeals, that is, requiring the Secretary of the Commonwealth to forward notice of Virginia long-arm claims to non-residents by certified or registered mail, would be extremely burdensome upon

the Secretary of the Commonwealth and would necessarily result in an increase in the workload, staffing needs and costs of her office. (App. at 83.) Logically, these costs would ultimately be borne by the taxpayers of Virginia.

The Maryland decision also draws into question other federal and state laws permitting service and notice by first-class mail. *See, e.g.*, Federal Bankruptcy Rule 7004(b) (1996) (authorizing service by first-class mail); 20 U.S.C. § 1095a (a) (2) (in federal garnishment proceeding, "the individual shall be provided written notice, sent by mail to the individual's last known address. . . . "); Minn. Stat. § 170.55 (1996) (authorizing notice of motor vehicle liability claims to be sent by non-residents by first-class mail); Rule 6-125 of the Maryland Rules of Procedure ("Method of service – Generally – Except where these rules specifically require that service shall be made by certified mail, service may be made by personal delivery or ordinary mail); Idaho Code § 15-4-303 (1996) (comment to official text – in probate cases "[t]he provision for ordinary mail as a substitute for registered or certified mail is provided because . . . registered mail may not be available to reach certain addresses . . . and also certified mail may not be available as a process for service because of the method of delivery used [rural delivery and star route delivery]"); Mont. Code Ann. § 72-4-203 (1995) (again providing for mailed service in probate cases); N.D. Cent. Code § 30.1-25-03 (1995) (same); Utah Code Ann. § 75-4-303 (1996) (same).

Furthermore, the Maryland Court of Appeals rejected this long-standing Virginia procedure without any evidence to support the conclusion that first-class mail constitutes an unreliable method of providing notice. The

Maryland court's arbitrary action, and the likelihood of inconsistent findings and rulings in other state courts, demonstrates the need for a national standard upholding the use of first-class mail for notice proceedings.

Finally, well-recognized principles of full faith and credit should not be allowed to permit a court of a sister state to second-guess the decisions of a neighboring state's legislature merely because that court concludes that, in its opinion, more stringent and costly notice requirements are preferable.

For all of these reasons, this Court should grant this Petition for Writ of *Certiorari*.

REASONS FOR GRANTING THE PETITION

I. First-Class Mail Delivery By The United States Postal Service Constitutes A Reasonably Calculated Method Of Providing Notice For Purposes Of Obtaining *In Personam* Jurisdiction So As To Satisfy Requirements Of Due Process.

A. First-Class Mail Satisfies Requirements of Due Process

The Maryland Court of Appeals erred when it concluded that first-class mail delivery by the United States Postal Service does not constitute an adequate mechanism for providing notice in an *in personam* case. The Maryland Court of Appeals reached this erroneous decision without evidence before it to support the conclusion that the United States mail constitutes an unreliable

method of advising persons of the claims which have been asserted against them. Instead, again without statistical proof, the Maryland Court concluded that alternative methods such as certified and registered mail "offer a considerably higher degree of probability of actual notice." (App. at 26.)

In fact, common sense weighs against the Maryland Court of Appeal's conclusion in this regard. As noted by the dissent,

> [Certified or Registered] mail does not increase the likelihood that the mail will arrive at the address to which it was sent. If the address is correct, then ultimate receipt by the defendant is about as likely with first-class mail as with certified mail. The use of "certified mail" merely provides corroborative evidence that the material is actually sent and further provides a record of dispatch and delivery. *See State v. Barnes*, 273 Md. 195, 209, 328 A.2d 737, 746 (1974) (stating that "[t]he only logical purpose to be served by directing that the notice be delivered by certified mail is to provide corroboration for bald assertions of having given such notice and a means of tracing and establishing the date of receipt should a dispute concerning the delivery of notice arise"). . . .

(App. at 36.) *See also Holmes v. Randolph*, 610 N.E.2d 839, 845 (Ind. 1993) (noting that the "use of certified mail will provide a better record of receipt but not necessarily

increase the probability the addressee will actually receive the notice.")[2]

Furthermore, it is clear that Virginia's statutory method for service of process on non-residents provides sufficient procedural safeguards to ensure that the due process rights of non-resident litigants are protected in that it is "reasonably calculated . . . to apprise interested parties of the pendency of [Virginia actions against them] and to afford them an opportunity to present their objections." *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 314 (1950). These procedural safeguards include a provision within the Virginia Code which allows litigants to challenge Virginia judgments when they claim not to have received actual notice of a Virginia proceeding against them. Va. Code Ann. § 8.01-428 (1950, 1992 Repl. Vol.) (App. at 80.)[3] In addition, as explained above, the Secretary of the Commonwealth is required to certify that she

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[2] Furthermore, again as noted by the dissent, the method of service set forth in § 8.01-329 "provides a record of dispatch" which is comparable to certified or registered mail. (App. at 37.) Section 8.01-329 requires the Secretary of the Commonwealth to mail the notice and to certify that it has been sent, thereby, as is the case with registered or certified mail, requiring a disinterested party to issue a record of dispatch.

[3] In its opinion, the Maryland Court of Appeals reasoned that the protections afforded by Va. Code § 8.01-428 do not save the defective means of service of process set forth in § 8.01-329. (App. at 27-28.) The Maryland court relied upon this Court's decision in *Armstrong v. Manzo*, 380 U.S. 545 (1965), when reaching this conclusion. The circumstances which led to the violation of due process recognized in *Armstrong, supra*, are clearly distinguishable from Virginia's statutory procedure for challenging default judgments.

has forwarded the relevant pleading to the non-resident defendant's last known address.

Moreover, this Court has recognized on numerous occasions "that mail service is an inexpensive and *efficient* mechanism that is reasonably calculated to provide actual notice." *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 489-90 (1988) (emphasis added). *See also Mennonite Board of Missions v. Adams*, 462 U.S. 791, 799-800 (1983); *Greene v. Lindsay*, 456 U.S. 444, 455 (1982); *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. at 319. Statistics from the United States Postal Service support this conclusion. The 1996 Comprehensive Statement on Postal Operations transmitted by the United States Postal

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In *Armstrong*, this Court concluded that a father's right to due process was violated when he failed to receive notice of a Texas proceeding terminating his parental rights. Even though the child's mother was aware of the father's address, she did not attempt to provide him with notice of the termination proceeding. In a subsequent proceeding, the father was able to obtain the reinstatement of his parental rights. Nevertheless, this Court concluded that the second proceeding was not sufficient to "cure" the previous violation of the father's right to due process. *Id.* at 551.

In contrast, pursuant to Va. Code § 8.01-329, plaintiffs are required to execute an affidavit containing what they swear under oath to be the last known address for the defendants sought to be served. In turn, the Secretary of the Commonwealth is required to provide non-resident defendants with notice by first-class mail and to certify that she has sent such notices to the last known addresses of the relevant defendants. If for some reason a non-resident defendant does not receive the notice, he can challenge any judgment which has been entered against him pursuant to the procedure set forth in Va. Code § 8.01-428. (App. at 80.)

Service to Congress in accordance with 39 U.S.C. § 2401(e) reflects a decrease in customer complaints in 1996 from previous years. (App. at 161.) This Statement also reflects that "92 percent of the nation's households rate[ ] their overall satisfaction with the Postal Service as 'excellent,' 'very good,' or 'good'. . . . " (App. at 187.) In addition, an independent study conducted by the accounting firm of Price Waterhouse reflects an average national overnight successful delivery rate for first-class mail of 89% for mail sent within overnight geographical commitment areas; a 79% successful delivery rate for mail sent within two-day geographical commitment areas; and a 80% successful delivery rate for mail sent within three-day geographical commitment areas.[4] (App. at 185.)

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[4] The Maryland Court of Appeals found the Postal Service's statistics regarding successful delivery rates to be unpersuasive. (App. at 23.) Instead, the Maryland court indicated that it would need to see data from the Postal Service to show the amount of first-class mail which is not successfully delivered in order to reach the conclusion that first-class mail is a reliable method for providing notice in an *in personam* case. (App. at 23.)

It is not difficult to understand why reliable data regarding "undelivered" first-class mail would be difficult to obtain. Data which conceivably could be obtained regarding the number of complaints made to the Postal Service about the alleged non-delivery of first-class mail would not serve as a reliable indicator of the efficiency of notice given by first-class mail. Invalid or untrue complaints regarding non-delivery are likely to be made by persons attempting to establish that they did not receive undesirable mail or to establish that they have sent required mail, such as, for example, mail relating to the payment of bills. Furthermore, complaints also are likely to be made about mail which is subsequently delivered to the proper location (and the complaining party is unlikely to retract their complaint).

First-class mail has also been recognized as a valid mechanism for obtaining service of process in the context of bankruptcy litigation. Federal Bankruptcy Rule 7004(b) (1996), adopted in 1983, permits service of a summons and complaint in bankruptcy cases by first-class mail, and provides that the mailing may be made "to the individual's dwelling house or usual place of abode," or "to the place where the individual regularly conducts a business or profession." The constitutionality of the notice provided in accordance with Bankruptcy Rule 7004 has been upheld on numerous occasions. *Matter of Park Nursing Center, Inc.*, 766 F.2d 261, 263 (6th Cir. 1985); *In Re M & L Business Mach. Co., Inc.*, 190 B.R. 111, 115 (D. Colo. 1995); *In Re Cossio, Inc.*, 163 B.R. 150, 156 (9th Cir. BAP (Cal.) 1994), *aff'd*, 56 F.3d 70 (9th Cir. 1995); *Matter of Younger*, 166 B.R. 494, 496-97 (S.D. Ga. 1993); *Leavell v. Karnes*, 143 B.R. 212, 217 (S.D. Ill. 1990); *Windsor Communications Group, Inc. v. Grant*, 75 B.R. 713 (E.D. Pa. 1985).[5]

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[5] The constitutionality of notice provided by first-class mail has also been upheld by federal and state courts in connection with additional types of claims. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1995) (upholding notice by first-class mail to potential class members in class action lawsuit); *Peters v. National Railroad Passenger Corp.*, 966 F.2d 1483, 1485 (D.C. Cir. 1992) (recognizing notice by mail to class members as "the best notice possible under the circumstances") (citation omitted); *Nelson v. Diversified Collection Services, Inc. and United Student Aid Funds*, 1997 U.S. Dist. LEXIS 5214 (D.C. Md. 1997) (upholding notice by first-class mail of federal garnishment claims); *Schilling v. Odlebak*, 177 Minn. 90, 224 N.W. 694 (1929) (upholding constitutionality of Minnesota statute authorizing service upon Secretary of State as statutory agent of non-residents who are sued in connection with motor vehicle accidents occurring within the state of Minnesota where the

Even the Maryland Court of Appeals recognized the bankruptcy service rule as "strong precedent and rather extensive experience that supports the use of first-class mail for the purpose of obtaining personal jurisdiction." (App. at 23.) Nevertheless, the Maryland court attempted to distinguish bankruptcy litigation from the types of claims at issue pursuant to Virginia's long-arm statute in an effort to support its conclusion that something "more" is required to fulfill due process requirements when general long-arm jurisdiction is asserted. As explained below, the Maryland court's attempts in this regard are irrelevant to the determination of whether the method of service provided for within Va. Code § 8.01-329 satisfies the requirements of procedural due process and demonstrate the need for a national standard on the sufficiency of first-class mail service.

B. The Maryland Court's Test for Determining When Service by First-Class Mail is Sufficient is Illogical and Strained.

Under the analysis adopted by the Maryland Court of Appeals, if providing notice by first-class mail is not constitutionally permissible in a particular type of lawsuit, then statutorily authorized notice by mail does not establish *in personam* jurisdiction even if received. The Maryland court's test for ascertaining when notice by mail is sufficient is uncertain at best in that, as explained above, the Maryland court does recognize that service by

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statute also provided that notice of such a claim is to be mailed by regular mail to the non-resident defendant).

mail is constitutionally sufficient in certain causes of action, such as bankruptcy. The Maryland court attempts to give several reasons for distinguishing the bankruptcy cases from long-arm litigation pursued against non-residents in Virginia, none of which are persuasive.

First, citing *Matter of Park Nursing Center, supra,* the Maryland Court of Appeals notes that bankruptcy default judgments may be set aside if a litigant can establish that he failed to receive notice of the proceeding. (App. at 24.) This attempted distinction by the Maryland court ignores the fact that Virginia provides for a similar procedural protection within its statutes. Va. Code § 8.01-428.

The Maryland Court of Appeals also implies that service by first-class mail may be appropriate in bankruptcy litigation because of the high volume of cases in the bankruptcy courts. (App. at 25.) If volume of cases is a relevant factor in determining whether the requirements of procedural due process are met by a statutorily authorized method of service, then the Maryland Court of Appeals should have considered the extremely high volume of non-resident service applications which are processed by the Secretary of the Commonwealth per week and per year. As explained in the Commonwealth of Virginia's Motion for Reconsideration (App. at 64) and in an affidavit from the Deputy Secretary of the Commonwealth which has been made a part of the Appendix to this Petition (App. at 82), the Secretary of the Commonwealth processes approximately 975 requests for service of process on non-residents per week and over 50,000 of such requests per year. In addition, as explained in the Deputy Secretary's affidavit, a requirement that each of these requests be forwarded by registered or certified

mail to non-residents, as suggested by the Maryland Court of Appeals, would substantially increase the workload, staffing needs, and costs of the Secretary of the Commonwealth. Thus, the "state interest" in providing for notice by first-class mail and the "special circumstances" involved in non-resident service cases in Virginia would appear to be at least equivalent to those which were recognized by the Maryland court to be involved in bankruptcy cases so as to justify service by first-class mail.

Regardless, as explained above, the only relevant issue with respect to statutory compliance with due process is whether the means provided for within the statute is "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. at 314. There was no evidence before the Maryland Court of Appeals to support its conclusion that first-class mail is not a "reasonably calculated [method] . . . to apprise interested parties" and "to afford them an opportunity to present their objections" and, in fact, there is precedent from this Court to support a contrary conclusion. Furthermore, there was no evidence before the Maryland Court of Appeals to support its conclusion that certified or registered mail is more likely to result in actual notice of a pending action. Contrary to the apparent reasoning of the Maryland court, the mere fact that these alternative means of providing notice are more costly for litigants to utilize or that these methods may provide potential plaintiffs with convenient evidence of receipt does not mean

that the use of certified or registered mail is more likely to result in actual notice.

Thus, it is clear that the Maryland Court of Appeals erred when it concluded the use of first-class mail to provide notice is insufficient to meet requirements of due process. It is also apparent that the Maryland court's erroneous decision has the potential to wreak havoc on the enforceability of Virginia judgments within Maryland and across the country, and, further, that the decision indirectly calls into question the constitutionality of numerous statutes, both state and federal, which authorize notice by first-class mail.[6] Under the circumstances, this Honorable Court should grant this Petition for a Writ of *Certiorari* and reverse the decision of the Maryland Court of Appeals on appeal.

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[6] *See, e.g.*, Minn. Stat. § 170.55 (1996); 20 U.S.C. § 1095a (a) (2) (authorizing service by mail in federal garnishment actions used in connection with federal student loans); Idaho Code § 15-4-303 (1996) (authorizing service by mail in rural areas in probate cases); Mont. Code Ann. § 72-4-203 (1995) (same); N.D. Cent. Code § 30.1-25-03 (1995) (same); Utah Code Ann. § 75-4-303 (1996) (same).

II. The Full Faith And Credit Clause Of The United States Constitution Requires A State To Recognize The Validity Of An *In Personam* Judgment Obtained Within A Foreign State If Actual Notice Of The Foreign Action Was Received By The Judgment Debtor, Irrespective Of The Method Used To Obtain Actual Notice.

Article IV, Section 1 of the Constitution of the United States [hereinafter refered to as the "Full Faith and Credit Clause"] provides that:

> [f]ull faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

The purpose of the Full Faith and Credit Clause is to preserve rights acquired or confirmed under public acts and judicial proceedings of one state by rendering recognition of their validity in others. *Pink v. A.A.A. Highway Express, Inc.*, 314 U.S. 201, 209 (1941); *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501 (1939). Under this Clause, all states are required to respect and enforce a judgment of another state, where its courts have general jurisdiction over the subject matter and the parties. *Kulkov v. Superior Ct. of California*, 436 U.S. 84, 95 n.9 (1978) (noting that a final judgment entered by a state court having jurisdiction over the person and subject matter should be entitled to full faith and credit by the courts of sister states); *Williams v. North Carolina*, 317 U.S. 287, 299 (1942) (a divorce decree entered by one state in accordance with principles of due process is binding

upon courts of other states). The Maryland Court of Appeals violated the Full Faith and Credit Clause when it refused to give effect to the Virginia judgment obtained by Resort against the Miserandinos.

By enacting a long-arm statute that requires notice to be sent by first-class mail, the Virginia General Assembly must be presumed to have concluded that this method is reasonably calculated to inform non-residents of the pendency of a judicial proceeding against them. *See Redding v. C.I.R.*, 630 F.2d 1169, 1181-82 (7th Cir. 1980), *cert. denied*, 450 U.S. 913 (1981) (legislature is presumed to be aware of constitutional principles set forth by the courts when enacting legislation); *Brown v. Va. Dept. of Corrections*, 886 F.Supp. 531, 535 (E.D. Va. 1995) (it is presumed that the General Assembly does not intend that its statute's application lead to irrational circumstances). In accordance with the Full Faith and Credit Clause, the Maryland Court of Appeals should have deferred to the Virginia General Assembly's conclusions in this regard. *See Public Citizen v. Dept. of Justice*, 491 U.S. 440, 465-66 (1989) (statutes are to be construed in a constitutional manner if they are subject to such a construction).

Furthermore, the Maryland Court of Appeals should only refuse to give effect to a Virginia judgment if it has been established that the judgment was rendered in violation of principles of procedural due process. *See International Shoe v. Washington*, 326 U.S. 310, 291 (1945). Such a violation was not established in this case. In fact, the Maryland Court of Appeals refused even to consider all of the factors necessary for the court's analysis in reaching such a determination.

Specifically, the Maryland court failed to make any inquiry whatsoever as to whether the Miserandinos actually received notice of the Virginia judgment.[7] If, in fact, the Miserandinos received actual notice of the Virginia proceeding in order "to afford them an opportunity to present their objections," then they were given all of the process that they were due under the Constitution. *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The Maryland court's disclaimer of Virginia law is even more egregious here because the court failed to follow its own established precedent. *See Academy of IRM v. LVI Environmental Services, Inc.*, 344 Md. 434, 687 A.2d 669 (1997). In *Academy of IRM*, the Maryland Court of Appeals held that compliance with statutory requirements for service of process gives rise to a presumption that service was properly made. *Id. See also Mohr v. Universal C.I.T. Corp.*, 216 Md. 197, 204, 140 A.2d 49, 51 (1958) (referring to "the universal rule to the effect that the receipt of a letter by the addressee is presumed, when it is shown that the letter, properly stamped and addressed, was posted in the mails").

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[7] As noted by the dissent, the fact that the Miserandinos received notice of Resort's attempt to record the Virginia judgment in Maryland by first-class mail at the same address which was provided to the Secretary of the Commonwealth in Resort's affidavit for service of process (provided in accordance with Va. Code § 8.01-329), renders their contention that they failed to receive notice of the Virginia proceeding highly suspect. (App. at 35.)

Moreover, as explained above, the Maryland Court of Appeals' standard for when providing notice by first-class mail is constitutionality sufficient is vague at best. A preferable approach, which would have been consistent with the Full Faith and Credit Clause, would have been for the Maryland court to recognize that notice by first-class mail is permissible in all forms of *in personam* actions and to have left with Virginia's General Assembly the decision as to when notice by first-class mail may be authorized. Some state legislatures or even Congress may elect to adopt statutes which comport with the minimum requirements of due process, while others may choose to adopt more stringent requirements than those actually mandated by the Constitution. A court of a sister state should not be permitted to second guess the decisions of a neighboring state's legislature merely because that court concludes that, in its opinion, more stringent and costly notice requirements are preferable. *See Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 481-82 (1982) (interpreting federal Full Faith and Credit Act and concluding that federal courts may not "employ their own rule . . . in determining the effect of State judgments").

Because first-class mail has been recognized by this Court as a "reasonably calculated" means of providing notice to defendants, if the Miserandinos actually received the mailed notice authorized by Va. Code § 8.01-329, they received all the process they were due under the Constitution. Therefore, when the Maryland Court of Appeals refused to even consider the issue of whether the Miserandinos received actual notice, it

committed reversal error subject to correction by this Court if this Petition for Writ of *Certiorari* is granted.

CONCLUSION

This Court should grant this Petition for Writ of *Certiorari* and reverse the judgment of the Maryland Court of Appeals.

Respectfully submitted,

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